

DEPARTMENT OF INSURANCE

Bulletin 229
June 20, 2016

Form of Consulting Agreement for Use by Agents

This bulletin is directed to insurance producers licensed under [IC 27-1-15.6](#) who write products that are not commercial property and casualty coverage and to insurers placing policies through those producers. The purpose of this bulletin is to reduce the regulatory burden on agents wishing to charge a consulting fee to allow them to continue to assist Hoosiers with insurance purchases even when an insurer discontinues paying commissions for a product.

A licensed producer may charge a consulting fee for placement of a policy without an insurance consultant license if certain requirements are met. The fee must be reasonable and reimburse the producer for expenses, including labor, incurred in placing the business. The insured must be provided **written** notice before any fee is incurred, and the notice must state the amount of the fee and the basis for calculating the fee. If the producer will receive compensation for the sale of the policy other than the consulting fee, the producer must disclose that fact prior to the sale as well as the method of compensation. Also, the amount and basis may not vary among insureds. The fee must be identified separately from premium on any invoice. Furthermore, the fee must be provided for the services provided, rather than for the provision of coverage.

Producers performing consulting services are obligated, as are licensed consultants, to:

- (1) Serve with objectivity and complete loyalty solely the insurance interests of the producer's client; and
- (2) Render the client such information, counsel, and service as within the knowledge, understanding, and opinion, in good faith of the producer, that best serves the client's needs and interests.

Typically, a consultant must have a fee agreement form approved by the Commissioner before it is used. However, to reduce the burden on producers and prevent any delay to consumers wishing to procure insurance from such agents, the Commissioner has approved the attached agreement for use by producers. Other forms may be used instead of the attached form, if it is filed with the Department.

The federal Centers for Medicare and Medicaid Services (CMS) has provided guidance for when a health insurer may exclude agent and broker fees from earned premium under 45 CFR 158.130. CMS has provided seven conditions that must exist for the insurer to exclude a producer's fees from premium:

- (1) The law of the state in which the policy is situated does not deem the agent or broker to be a representative of the issuer;
- (2) The policyholder is not required to utilize an agent or broker to purchase insurance and may purchase a policy directly from the issuer;
- (3) The policyholder selects, retains, and contracts with the agent or broker on his or her own accord;
- (4) The policyholder negotiates and is responsible for the fee or commission separate and apart from premium;
- (5) The issuer does not include these agent or broker commissions and fees in rate filings submitted to the applicable regulatory agency;
- (6) The policyholder voluntarily chooses to pass the fee or commission through the issuer and is not required to do so, or the policyholder pays the fees or commission directly to the agent or broker; and
- (7) The policyholder issues the 1099 to the agent or broker, if a 1099 is required.

It is the Department's interpretation that consulting fees described in this bulletin meet the first five conditions.

The Department will maintain FAQs on its website related to consulting by producers. These can be found at <http://www.in.gov/idoi/2446.htm>.

INDIANA DEPARTMENT OF INSURANCE

Stephen W. Robertson, Insurance Commissioner

Insurance Consulting Agreement

THIS AGREEMENT is made as of _____, _____, by and between
_____ ("Consultant") and _____ ("Client").

1. APPOINTMENT

Client hereby engages Consultant to provide advisory and consulting services to Client for the purposes of assistance in the procurement and placement of Client's insurance needs with appropriate insurers.

2. TERM OF AGREEMENT

This Agreement shall terminate upon thirty (30) days written notice by either party to the other.

3. STATUTORY COMPLIANCE

Consultant shall comply with all applicable insurance laws, including but not limited to Indiana Code § 27-1-15.6.

4. CONSULTANT'S DUTIES

Consultant shall serve with objectivity and complete loyalty solely the insurance interests of Client; however, all decisions related to Client's business shall be made by Client in its sole and absolute discretion, for which Client hereby assumes the sole responsibility. Consultant shall receive and have access to information that is considered proprietary and confidential to Customer. Both during and after the term of this Agreement, Consultant agrees to preserve and protect reasonably the confidential nature of this information.

5. CONSULTANT'S COMPENSATION AND EXPENSES

For all services rendered by the Consultant under this Agreement, Client shall pay the Consultant the fees and expenses identified on Exhibit "A" attached hereto and made a part hereof.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first written above.

"Client"

"Consultant"

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

Exhibit A**ADDITIONAL DUTIES TO BE PERFORMED BY CONSULTANT/AGENT.**

A. _____

B. _____

C. _____

D. _____

COMPENSATION

Fees for Services

- A. _____
- B. _____
- C. _____
- D. _____

COMMISSION

Agent will _____ or will not _____ receive a commission. (Check the one that applies.)

DIRECT COST REIMBURSEMENT

- A. _____
- B. _____
- C. _____
- D. _____

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